

AMENDED IN SENATE APRIL 14, 2015

AMENDED IN SENATE MARCH 16, 2015

**SENATE BILL**

**No. 14**

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**Introduced by Senator Lara**

**(Coauthors: Senators Anderson, Mitchell, and Vidak)**

(Coauthors: Assembly Members Chávez, Cooper, Gonzalez, Lopez, Maienschein, Olsen, Rodriguez, Mark Stone, and Steinorth)

December 1, 2014

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An act to add Section 1708.5.5 to the Civil Code, and to amend Section 1106 of the Evidence Code, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 14, as amended, Lara. Sexual battery: consent defense: ~~minors~~, *minor's* sexual conduct.

Existing civil law makes a person who commits a sexual battery, as defined, upon another liable to that person for damages and authorizes a court to award equitable relief, as specified. Existing civil law provides that he or she who consents to an act is not wronged by it.

This bill would prohibit consent from being a defense in any sexual battery civil action if the person committing the sexual battery is a specified adult who is in a position of authority and is able to exercise undue influence, as defined, over the minor.

Under existing law, in any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, opinion evidence, reputation evidence, and evidence of specific instances of plaintiff's sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff. Existing law requires specified procedures to be followed in any civil action alleging conduct constituting sexual

harassment, sexual assault, or sexual battery if evidence of sexual conduct of the plaintiff is offered to attack the credibility of the plaintiff, as specified. Existing law authorizes the court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury.

This bill ~~would~~, in any sexual battery civil action involving a minor and an adult who is in a position of authority as described above, *would* prohibit evidence of the plaintiff minor's sexual conduct with the defendant adult from being admissible to prove consent by the plaintiff or the absence of injury to the plaintiff. The bill would authorize such evidence of the plaintiff's sexual conduct to be introduced only to attack the credibility of the plaintiff or to prove something other than consent by the plaintiff if, upon a hearing of the court out of the presence of the jury, the defendant proves that the probative value of that evidence outweighs the prejudice to the plaintiff, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1708.5.5 is added to the Civil Code, to  
2     read:  
3     1708.5.5. (a) Notwithstanding Section 3515, consent shall not  
4     be a defense in any civil action under Section 1708.5 if the person  
5     who commits the sexual battery is an adult who is in a position of  
6     authority over the minor.  
7     (b) For purposes of this section, ~~a person~~ *an adult* is in a  
8     “position of authority” if he or she, by reason of that position, is  
9     able to exercise undue influence over a minor. A “position of  
10    authority” includes, but is not limited to, a natural parent,  
11    stepparent, foster parent, relative, partner of any such parent or  
12    relative, caretaker, ~~adult~~ youth leader, recreational ~~director who~~  
13    ~~is an adult, adult director~~, athletic manager, ~~adult~~ coach, teacher,  
14    counselor, therapist, religious leader, doctor, ~~adult~~ employee of  
15    one of those aforementioned persons, or ~~adult~~ coworker.  
16    (c) For purposes of this section “undue influence” has the same  
17    meaning as in Section 15610.70 of the Welfare and Institutions  
18    Code.

1 SEC. 2. Section 1106 of the Evidence Code is amended to read:

2 1106. (a) In any civil action alleging conduct which constitutes  
3 sexual harassment, sexual assault, or sexual battery, opinion  
4 evidence, reputation evidence, and evidence of specific instances  
5 of plaintiff's sexual conduct, or any of that evidence, is not  
6 admissible by the defendant in order to prove consent by the  
7 plaintiff or the absence of injury to the plaintiff, unless the injury  
8 alleged by the plaintiff is in the nature of loss of consortium.

9 (b) Subdivision (a) shall not be applicable to evidence of the  
10 plaintiff's sexual conduct with the alleged perpetrator.

11 (c) Notwithstanding subdivision (b), in any civil action brought  
12 pursuant to Section 1708.5 of the Civil Code involving a minor  
13 and adult as described in Section 1708.5.5 of the Civil Code,  
14 evidence of the plaintiff minor's sexual conduct with the defendant  
15 adult shall not be admissible to prove consent by the plaintiff or  
16 the absence of injury to the plaintiff. Such evidence of the  
17 plaintiff's sexual conduct may only be introduced to attack the  
18 credibility of the plaintiff in accordance with Section 783 or to  
19 prove something other than consent by the plaintiff if, upon a  
20 hearing of the court out of the presence of the jury, the defendant  
21 proves that the probative value of that evidence outweighs the  
22 prejudice to the plaintiff consistent with Section 352.

23 (d) If the plaintiff introduces evidence, including testimony of  
24 a witness, or the plaintiff as a witness gives testimony, and the  
25 evidence or testimony relates to the plaintiff's sexual conduct, the  
26 defendant may cross-examine the witness who gives the testimony  
27 and offer relevant evidence limited specifically to the rebuttal of  
28 the evidence introduced by the plaintiff or given by the plaintiff.

29 (e) Nothing in this section shall be construed to make  
30 inadmissible any evidence offered to attack the credibility of the  
31 plaintiff as provided in Section 783.